

Chapter 592: THE SMALL COMMUNITY WASTEWATER PROGRAM

SUMMARY: The Maine Small Community Program funds sewage treatment facilities for municipalities, quasi-municipalities and unorganized townships with water quality problems in freshwater lakes, streams, and/or salt water; or public health hazards. Funding may also include privately owned sanitary facilities within such communities. The requirements for and extent of such funding by the State are is defined in this section.

1A. Definitions. The terms below ~~shall~~ have the following meanings, :

A1. Applicant. An "~~a~~Applicant" is a municipality, quasi-municipal organization, or ~~c~~County ~~c~~Commissioners acting on behalf of an unorganized township or plantation.

B. Commercial establishment. A "commercial establishment" is a building used for purposes of trade or commerce, or used to conduct operations of a non-profit, governmental, or educational organization, or for renting for a total of more than six months in any year.

C2. Individual ~~s~~System. An "~~I~~Individual ~~s~~System" is a privately owned and operated sanitary treatment facility serving one or more single family dwellings ~~principal residences~~, seasonal dwellings, or commercial establishments, ~~schools, or non-profit organizations~~.

D3. Municipal ~~s~~System. A "~~m~~Municipal ~~s~~System" is a municipally or quasi-municipally owned sanitary facility, ~~serving one or more principal residences, seasonal dwellings, commercial establishments, schools, or non-profit organizations~~ the operation of which is funded by the collection of user fees or property taxes.

4. ~~Principal Residence.~~ A "Principal Residence" is the dwelling in which the owner is domiciled and occupies at least 51% of the year.

5. ~~Commercial Establishment.~~ A "Commercial Establishment" is a building used for purposes of trade, commerce, or rent.

E6. Non-~~p~~Profit ~~o~~Organization. A "~~n~~Non-~~p~~Profit ~~o~~Organization" is an organization with non-profit status under the U.S. Internal Revenue Code.

F7. Seasonal dwelling Residence. A "~~s~~Seasonal dwelling Residence" is a dwelling that is not defined as a "commercial establishment" or "single family dwelling, occupied by the owner less than 51% of the year.

G4. Single family dwelling. A "single family dwelling" is the dwelling that is continuously occupied by the owner for 6 months or more in any calendar year and is the legal residence of the owner for State and Federal income tax purposes.

2B. Funding. ~~The department DEP uses receives funds from bond issues for implementation of this program. Grants may be awarded made to pay defray-up to 90% of the costs of municipal systems, pollution abatement construction programs in municipalities or unorganized townships and plantations in which the total construction cost of the project does not exceed \$100,000. Grants involving individual systems projects serving seasonal dwellings or commercial establishments may be awarded made eligible for funding from 25% to 100% up to 50% of the cost of the project, depending upon the use of the property and the owner's annual income. The maximum construction cost of any project receiving funding through this program is \$100,000. Although An an application may include several projects, and only one approved application from any applicant may be funded in any one year up to a an annual maximum of \$90,000.~~

3C. Application for funds ~~Small Community Program Grant~~

A1. Contents of an application. An application is a written submission from the governing body of the municipality, or from the county commissioners on behalf of an unorganized township or plantation. The application must ~~shall~~ explain the water pollution problem, the number and type of sanitary systems involved (single family dwellings, seasonal dwellings, principal residences, seasonal residences, commercial establishments, etc.) and the benefit expected to the State from elimination of the pollution sources as well as all other information required by this rule. Use of monies obtained under the Small Community Grants Program is subject to the conditions stated in this chapter rule.

B2. Deadline. ~~An a~~Applications may be submitted at any time. ~~However, Only~~ applications received before January 31 of the year will be eligible for award in the same calendar year except as described in section 3(C) below. ~~Applications should be submitted to:~~

Department of Environmental Protection
Division of Engineering and Technical Assistance
17 State House Station
Augusta, ME 04333-0017

C. Emergency request. After the deadline for applications an application may be submitted as an emergency request for award during the same calendar year. An emergency request must demonstrate that the project will eliminate an immediate, severe threat to a public drinking water supply, an open shellfishing area, or to public health and will be considered on a case-by-case basis subject to the availability of funds. An emergency request is subject to all other requirements of the program.

4D. Review of aApplications

A1. Project priorities. Applications are prioritized by the severity of the pollution problem caused by the existing condition. Four Three types categories of pollution problems priority are used to prioritize applications, and described. eEach application category is assigned a priority type number of points based on the predominant category of problems shown in the application. indicative of its hazard to public health. Grants are awarded Applications are funded on the

basis of priority type ~~points~~ assigned, documentation of specific problems, and the number of requests received during the year.

~~(a) Category 1: Water Supply Protection 30 Points~~

- (1) Public drinking water supply protection projects are designated as priority 1, the highest priority. The Such projects must will eliminate a source of contamination to a public surface or subsurface drinking community water system supply—as defined by 22 M.R.S.A. § Section 601. This Thirty priority type points will be assigned to a projects when where a potential public health hazard exists as a result of the contamination, and the contamination does or will require alternative sources of water or additional water treatment if the project is not carried out.

~~(b) Category 2: Shellfishery Protection 25 Points~~

- (2) Shellfishery protection projects are designated as priority 2, the second highest priority. The Such projects must will eliminate a source sources of contamination to a shellfishing area. This Twenty-five priority type points will be assigned to a projects that will eliminate sources of waste responsible for a shellfish area closure or eliminate sources of pollution in order to maintain an open status, according to the standards of the Department of Marine Resources.

- (3) Water protection projects are designated as priority 3, the third highest priority. The project must eliminate a source of inadequately treated sewage to salt water bodies or fresh water lakes, streams, and rivers. This priority type will be assigned to a project that will eliminate direct discharges of untreated or partially treated wastewater that degrade the quality of surface waterbodies.

~~(c) Category 3: Public Nuisance Conditions 20 Points~~

- (4) Public nuisance condition elimination projects are designated as priority 4, the fourth highest priority. The project must eliminate a hazard to public health resulting from the improper disposal of sewage. Public nuisance conditions may exist even if there is no discharge of sewage to a waterbody. Such projects will alleviate septic system failures that result in untreated sewage entering salt water bodies or fresh water lakes and streams, or potentially threaten the public health of the community. This Twenty priority type points will be assigned awarded to a the projects that eliminates a nuisance or health hazard to the public caused by a malfunctioning or inadequate wastewater treatment and disposal system. that meet these goals. A mMalfunctions contained wholly within an the owner's owners' property is not normally considered to be a public nuisance. are not included in this category.

NOTE: In addition to information furnished in the application, the department Commissioner may also seek information from the Department of Human Services, the Department of Marine Resources, or other sources state agencies in the assignment of projects to specific categories and determination of the relative priority of problems within a category.

B2. Priority list. The project priority list prepared by Commissioner staff is submitted to the bBoard for approval. After approval, each applicants whose projects will ~~are to~~ be funded is

~~are~~ notified by the Commissioner, and two copies of an ~~a~~Application for ~~s~~State ~~g~~Grant that formally allocates the grant funds are then sent to ~~each the~~ applicant for signature by authorized officials. An ~~a~~Applicants who ~~is were~~ not funded in any calendar year must reapply to be considered in the next calendar year.

C. Rescission of unspent grant funds. Grants which are awarded but not spent during the same calendar year may be rescinded by the department and used for other projects.

5E. Use of ~~Small Community Program~~ gGrant fFunds

A1. Eligible costs. Grant funds may be used to pay for the following work and services:

- (~~1a~~) Design of the treatment and disposal system;
- (~~2b~~) Construction of the treatment and disposal system up to and including connections through the foundation wall, as necessary;
- (~~3e~~) Proper abandonment of existing septic tanks to be replaced as part of the total construction plan;
- (~~4d~~) Inspection of the system by qualified person(s); ~~and~~
- (~~5e~~) Administrative Administration services, including project management, such as advertising costs and telephone bills associated with the project, external plumbing permits, and easement recording fees; and
- (~~6~~) Internal plumbing done to avoid the use of a pump when the cost of a pump would be greater than the cost of the re-plumbing.

B2. Non-eligible costs. Grant funds may not be used to pay for ~~defray~~ the following costs:

- (~~1a~~) Construction expenses incurred by the owner prior to department ~~Board~~ approval of an application for funding under this chapter ~~rule~~;
- (~~2b~~) Internal plumbing except as specifically allowed in section 5(A)(6); required to allow connection to new treatment system;
- (~~c~~) Plumbing permits and licensing fees;
- (~~3d~~) Easement or ~~costs~~, land acquisition costs ~~and deed registration fees;~~
- (~~4e~~) Excessive restoration beyond a reasonable amount necessary to comply with the Maine Subsurface Wastewater Disposal Rules ~~and/or contract documents standard Department specifications; and~~
- (~~5f~~) Other unnecessary costs or excessive charges as determined by the department ~~Commissioner~~.

6F. Applicant's Responsibilities and Requirements

A1. Related laws. ~~The a~~Applicant shall ~~must~~ abide by ~~Rules and Regulations of the State of Maine set forth in this Chapter in 38 M.R.S.A., et seq. concerning overboard discharges, and the Maine Subsurface Wastewater Disposal Rules; and all other applicable laws.~~

B2. Good faith effort by the applicant. Prior to submission of an application, ~~the~~ applicant shall make a good faith effort to ascertain the existence of all malfunctioning septic systems and direct discharges that are affecting water quality or causing a public nuisance within its jurisdiction. These systems are defined under Subsections 7(B) and (C) ~~(G)(2) and (3)~~ below.

(1a) The applicant shall post a public notice about the program at the Municipal Building asking for information from individuals who may qualify for the program.

(2d) A Licensed Plumbing Inspector or Code Enforcement Officer shall inspect ~~review~~ all potentially qualifying systems to determine if a malfunction or direct discharge exists.

(3e) The applicant shall provide the ~~d~~Department with information necessary to determine the grant eligibility of each individual system. A list of eligible systems, arranged in order of severity of the pollution problem, will be developed jointly by the applicant and department. Individual systems will be funded based upon this eligibility list, in order of the most severe to the least severe, until available grant funds are expended. Projects not on the eligible list or lower on the list may be funded at the department's discretion. ~~review the list of qualifying systems.~~

(d) ~~A Municipal Priority List will be developed jointly by applicant and Commissioner. This list will categorize direct discharges and malfunctions in order of severity. In order for a project to be considered, it must appear on the Priority List. Funding will usually be in accordance with this prioritization.~~

7G. Requirements of iIndividual sSystems for Funding for iInclusion in pProgram

A1. Individual system requirements. Individual systems may not be funded by the program, unless if and when the following requirements are met:

(1a) ~~The a~~Applicant has received a sState gGrant from the Small Community Program that includes funding for individually owned systems; :

(2b) The individual system meets the eligibility criteria of sections 7 (B) and (C) ~~Subsections (G)(2) and (3)~~ and is included in the list of eligible systems ~~Municipal Priority List described in section 6(B)(3) Subsection (F)(2)(d) of this chapter; regulation.~~

(3e) The owner of the individual system meets the income requirements of section 7(E) Subsection (G)(5) below and has submitted a sStatement of fFinancial cCondition to the applicant; and

(4d) The owner of the individual system has submitted to the applicant: (1) a signed aAgreement Form and (2) a signed eEasement fForm.

(ai) Agreement ~~Form~~. The aApplicant shall require a signed aAgreement Form between the applicant and the owner for each individual system (DEP form "Own 1"). This agreement must shall:

(iAA) Grant access to the site for design, construction and inspection of the required facilities; -

(iiBB) Require payment of owner's share of project ~~prior to work~~; -

(iiiCC) State that the owner is responsible for the maintenance and/or repair of the system; - and

(ivDD) Be accompanied by; the previous year's federal tax return if one was filed, or a signed statement of financial condition if a tax return was not filed.

(bi) Easement ~~fForm~~. The aApplicant shall require a signed eEasement fForm (DEP form "Easement") to be recorded by the applicant at the Registry of Deeds. This shall be recorded within thirty days after a contract has been signed for construction. This easement grants to the applicant the right of to access at all reasonable times to inspect and/or correct a malfunction should the owner fail to do so, and requires repayment of all or part of the grant to the applicant if the property is sold or transferred within a time period determined by the department. Funds which are repaid because of the transfer of property may either be used by the applicant to construct other projects on the list of eligible systems, or returned to the department.

B2. Eligible systems. In addition to other requirements of this ~~cChapter~~, only the following types of individual systems of the following descriptions may be eligible for funding:

(1a) A building structure that discharges raw or partially treated wastewater through a pipe or open ditch directly into the waters of the State;

(2b) A building structure that discharges raw or partially treated wastewater through a pipe or open ditch and threatens the public health of the community; or

(3) A structure with an alternative toilet (such as an outhouse, chemical toilet, or electric toilet) and graywater disposal systems that is discharging wastewater to the waters of the state or causing a public health hazard. Only the component of an alternative system that is discharging wastewater is eligible for funding.

C3. Non-eligible systems. Individual sanitary systems are not ineligible for funding in any of the following situations, :

- (1a) A building structure that has ~~not been consistently occupied~~ vacant for the twelve (12) months immediately prior to the date when a grant eligibility determination is requested from the State, of State inspection.
- (2b) A building structure lacking a pressurized water system.
- ~~(c) A building with an alternative toilet (such as an outhouse, chemical toilet, electric toilet, etc.) and a separate graywater system that is not malfunctioning.~~
- (3d) A building structure constructed after ~~October~~ July 1, 1974, for which that has not installed a septic system in compliance with the Maine Subsurface Wastewater Disposal Rules was not installed.
- (4e) A seasonal dwelling converted to year round use that does not meet the requirements set forth in ~~Title 30-A~~ M.R.S.A. § 42153223.
- (5f) A building structure that is otherwise not in compliance with laws of the State or Municipality.

D4. Expansion of ~~e~~Existing ~~f~~Facilities. A malfunctioning alternative disposal system, consisting of an alternative toilet and graywater disposal system, or one of its components, that is eligible for funding as described in section 7(B)(3) must be replaced with a properly designed alternative disposal system or component thereof. The grant percentage paid for the replacement will be determined as set forth in section 7(E)(1). Alternative systems that are upgraded to conventional systems are funded at one-half of the percentages shown in section 7(E)(1).

~~Replacement of an alternative toilet (outhouse, chemical toilet, electric toilet, etc.) and a gray water system with a conventional septic system are not eligible for grant assistance. However, if the gray water system discharges to surface waters of the state (Subsection G (2)(a)), a replacement for this specific system may be eligible for funding. If a conventional system for all household waste beyond the specific system is desired, the State participation will be limited to 45% for principal residences and 25% for seasonal dwellings or commercial buildings.~~

E5. Financial ~~r~~Requirements for ~~an~~ ~~i~~Individual ~~s~~Systems. The aApplicant shall require a signed statement of financial condition from the owner(s) of each individual system. For purposes of this ~~c~~Chapter, a copy of the owner(s) Federal Income Tax return for the preceding year is a statement of financial condition. If the owner(s) file separate returns, income from their returns will be combined for the purpose of determining eligibility for the program. In cases where a Federal Income Tax form is not filed, the owner must provide alternative documentation to the applicant for review and approval by the department Commissioner. A statement of financial condition is not required for a building municipal or quasi-municipal system owned by a local government or non-profit organization.

- ~~(a)~~ For jointly owned single family and seasonal dwellings, grant percentage is determined by the sum of all the property owners' taxable income from the previous year. ~~Income limitations on grant eligibility.~~

For commercial properties, grant percentage is determined by the sum of the owners' gross profit income from the previous year. Taxable income and gross profit will be determined from the specific lines found on the appropriate tax returns.

~~(i) Owner(s) of an individual system who reported a combined adjusted gross income of less than \$50,000 on the Federal Income Tax Return for the previous year may qualify for a state grant: up to 90% for a principal residence, or up to 50% for a seasonal residence or commercial establishment. Owners who have reported a combined adjusted gross income in excess of \$50,000 are not eligible for grant assistance. Those that do not meet the income limitation but because of extenuating circumstances can not afford the systems will be reviewed on a case by case basis with the Selectmen.~~

~~(ii) Owners of commercial establishments who have filed Federal Income Tax form 1040 must meet the following eligibility criteria:~~

~~(AA) Gross income on Schedule C must be less than \$100,000 and~~

~~(BB) Total rents received on Schedule E must be less than \$100,000 and~~

~~(CC) Gross profit on form 1065 must be less than \$100,000.~~

~~If the owner(s) of a commercial establishment file a Federal Income Tax return by means other than Federal Income Tax Form 1040, "Gross Profit" must be less than \$100,000 to qualify for grant assistance. Such commercial establishments include corporations and S corporations. School districts and non profit organizations owning an individual system may be eligible for funding up to 50%.~~

8H. Design of tTreatment sSystem. The applicant shall ~~must~~ secure the services of a qualified individual or consulting firm for the design of the treatment system. A licensed site evaluator may design subsurface treatment systems up to 2,000 gallons per day (gpd) in size. A professional engineer is required to ~~for~~ design and prepare contract documents for subsurface wastewater disposal systems in excess of 2,000 gpd and for ~~and/or~~ overboard discharge systems. ~~The Short Form Contract shall be used for systems less than 2,000 gpd.~~

9I. Cost qQuotations, cContract aAwards and sState pPayments

A1. Bidding requirements. The applicant is required to solicit quotations from area contractors using contract documents approved by the department. ~~DEP Short Form Contract for State Projects (See subsection I (2)) or documents prepared by an professional engineer.~~ Sealed competitive bids are required for all contracts. An advertisement for bids must ~~shall~~ be published in a local newspaper at least seven (7) days before bids are opened. The systems may be bid as follows:

~~(1a) Single Individual Systems.~~ Separate contracts must ~~will~~ be bid for each individual system, and the basis of contract award is ~~will be~~ a lump sum price ~~basis~~ for each system; or

- (b) ~~A Group of Individual Systems.~~ A single contract must ~~may~~ be bid for all individual systems. In this case, the basis of contract award is ~~will be~~ a total lump sum price for construction of all individual systems; or
- (2e) ~~For m~~Municipal ~~systems, Treatment Facilities.~~ ~~t~~The basis of the contract award must ~~shall~~ be stated in the cContract dDocuments.

B2. Contract documents. ~~Short Form Contract for State Projects:~~ ~~A set of Contract Documents are available from the Department used to bid contracts on individual treatment systems. Contract dDocuments, to include forms such as the following, and must be approved by the department, include:~~

- (1a) Instructions to bidders;
- (2b) Bid proposal;
- (3e) Contract agreement;
- (4d) Contract ~~Standard~~ general conditions;
- (5e) Construction specifications; and
- (6f) Construction plans.

C3. Award of cConstruction cContracts. The aApplicant shall award construction contracts to the lowest responsive bidder pursuant to section 9(A) ~~Subsection I (5)~~ of this chapter ~~regulation~~ and provided that the contractors selected has ~~have~~ demonstrated that he or she has the ability to perform the required this kind of work and that he or she will comply with all State laws and the requirements of the contract documents. The contract documents may require that bidders be licensed or certified to perform the work. "Standard General Conditions for Contract Work on DEP Projects" available from the Department.

D4. State pPayments. Payments for eligible costs up to the limit of funding are remitted to the applicant as they are incurred. A payment request consists of a department approved payment request form ~~cover letter~~ detailing the eligible expenses with documentation attached. Copies of design invoices, construction contracts, inspection invoices, advertisement invoices, and change order statements are the usual documentation required for payment; however, the dDepartment may require additional documentation in particular cases if necessary to prove the appropriateness of payment.

10J. Inspection of tTreatment sSystem. All construction under program grants pursuant to this cChapter must ~~shall~~ be inspected as follows:

A1. Engineered subsurface or overboard discharge systems. For subsurface disposal systems with ~~of~~ wastewater flow greater than 2,000 gpd, or overboard discharge systems, the services of an on-site inspector hired by the consulting engineer are required.

B2. Non-engineered subsurface systems. For subsurface disposal systems with ~~of~~ wastewater flow less than 2,000 gpd, inspection by the local plumbing inspector; or code enforcement officer consulting engineer, site evaluator, or DEP project engineer ~~is~~ are required. Additional inspection by a site evaluator, consultant, or department project representative may be required by the contract documents.

AUTHORITY: 38 M.R.S.A. § ~~Section~~ 411

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